

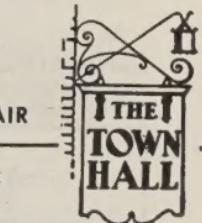
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Does Wire Tapping Violate the Right to Privacy?

Moderator, JAMES F. MURRAY, JR.

Speakers

MORRIS L. ERNST

RICHARDSON DILWORTH



COMING

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THE SPEAKERS' COLUMN

RICHARDSON DILWORTH — District Attorney, Philadelphia, Pennsylvania. Born in Pittsburgh, Pennsylvania on August 29, 1898, Mr. Dilworth attended St. Mark's School, and went to Yale University in 1921. He worked a year and a half in a steel mill and in the Oklahoma oil fields, and then entered the Yale Law School. In 1926 he graduated, cum laude, and as an editor of the Yale Law Review.

Mr. Dilworth served a total of five years in the Marine Corps during World I and II, and has been awarded the Purple Heart, the Silver Star, and a Presidential Unit Citation.

In 1947, he ran for Mayor of Philadelphia, but was defeated. Again in 1949 Mr. Dilworth ran for office and was elected City Treasurer. The following year he was in a race for Governor of Pennsylvania; he was elected in 1951 to the office of District Attorney of Philadelphia, which he holds today.

MORRIS L. ERNST — Lawyer, co-author (with David Loth) of recent book, *Report of the American Communist*. A graduate of the New York Law School, 1912, Morris Ernst has been a member of the law firm of Greenbaum, Wolff & Ernst since 1915. In the course of his legal career, he has served many prominent Americans, including Fiorello LaGuardia, Herbert Lehman, Franklin D. Roosevelt, and Harry S. Truman.

He served as arbiter for Mayor LaGuardia in the taxicab strike in 1934, and drafted legislation for Governor Lehman on insurance and banking matters. He was a member of the New York State Banking Board by appointment of Governor Franklin D. Roosevelt. Governor Lehman appointed him to the same position in 1933-45.

During the war, he served as special counsel for the War Production Board, and personal representative to President Roosevelt on various missions to England. More recently, Mr. Ernst was appointed by President Truman to the Committee on Civil Rights, and as a member of the President's Advisory Committee to the Post Office.

Among his many memberships, he includes, the Bar Association of the City of New York, and the County Lawyers Association.

Among his books are *The First Freedom*; *The Best is Yet*; *Too Big*; and recently, *Report on the American Communist*.

Moderator: JAMES F. MURRAY, JR. — New York Attorney, International Counsel and Lecturer.

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Does Wire Tapping Violate the Right to Privacy?

Moderator Murray:

When the second session of the 83d Congress convenes tomorrow you will find high on its agenda one of the most delicate and controversial issues to face lawmakers in our century. "Shall the use of wire-tap evidence be legalized and if so, precisely under what formula?" For centuries, down through the framing of our own Constitution, Anglo-American jurisprudence has defended with tenacity the bedrock premise that a man's home is his castle and that any encroachment upon individual privacy, even by law enforcement authorities in line of duty, must be stoutly resisted.

Obviously, however, our founding fathers could not have foreseen the technological developments of the telephone, tape recorder, and other electronic equipment which feature our contemporary society. Nor could they imagine that these advances might give such protection and assistance to criminals and traitors or communist conspirators, while those entrusted with the security of the nation might be prevented from placing into evidence information secured by monitoring these conversations.

Since 1934, wire tapping has been a federal offense, but to date, despite admitted and widespread tapping by federal, state, and other authorities, as well as private individuals, only one person has been convicted as a violator. The condition, of course, is a basic one. Congress must determine by what formula it can authorize proper law enforcement authorities to fight crime and protect national security through legalized wire tapping,

without at the same time paving the way to possible destruction of personal freedom and annihilation of privacy as we have long defended it.

Beneath this issue rests tonight's fundamental question: "Does Wire Tapping Violate the Right to Privacy?" Tonight, America's Town Meeting presents two of our nation's most respected legal authorities to examine this crucial topic. Our first guest, Mr. Morris L. Ernst, is a graduate of the New York Law School, and since 1915 has been a member of the firm of Greenbaum, Wolff, and Ernst. In the course of his legal career, he has served many prominent Americans, including Fiorella LaGuardia, Herbert Lehman, Franklin D. Roosevelt, and Harry S. Truman.

He was a member of the New York State Banking Board by appointment of Governor Franklin D. Roosevelt. Governor Lehman appointed him to the same position in 1933. During World War II, he served as personal representative to President Roosevelt on various missions to England. More recently he was appointed by President Truman to his Committee on Civil Rights. He is an author, having written *The First Freedom*, *The Best Is Yet, Too Big*, and recently, *Report on the American Communist*.

America's Town Meeting is delighted to welcome Mr. Morris L. Ernst.

Mr. Ernst:

Thank you. It is true that a man's home is his castle. Long ago, in our Constitution it was provided that this castle could only be invaded on the order of a judge in order to search for evi-

dence of a probable crime. Even legalized tapping of telephone wires violates privacy far beyond the ordinary search and seizure. It is an invasion of privacy even if ordered by a judge. So the question seems to me to be, "To what extent and for what purpose and under what controls should any search through tapping of wires be permitted?"

The number of illegal wire taps must run into the tens of thousands daily. In New York state, we have the Dewey tap law, under which a policeman applies in perfunctory fashion to a judge for permission to tap your wire or mine. No report has ever been made as to the number of taps allowed in New York State. In every state of the Union, this outrageous practice continues in order to catch a gambler, a prostitute, an embezzler, and other anti-social people.

All of this I would abolish. In Washington, the FBI taps wires solely on orders of the Attorney General of the United States. This until recently seemed to provide protection. The total number of wire taps, at any one time in the forty-eight states and in all possessions on the request of the FBI, is less than two hundred. How many wires are tapped by the military, without any supervision by a cabinet official, no one knows. As in most of life, we must draw a line between countervailing desires. I would oppose any invasion of privacy, no matter how well protected, except for the purpose of protecting the security of our nation against treason, espionage, and sabotage—and possibly kidnaping.

I do so because we have been faced with world-wide underground movements known as Fascism, Nazism, and Commun-

ism. I would limit wire tapping strictly to this area, have it controlled solely by the FBI, on its application to a proctor appointed by the United States Supreme Court. I would not even trust every federal judge and I would agree to have a report made monthly as to the number of taps, so that from time to time the people of our Republic could re-appraise the situation.

In my opinion, wire tapping by cities and states is presently unconstitutional, even in situations as the Dewey tap law which has been incorporated in our constitution in this state. I deem such local invasion of privacy unconstitutional, because the telephone wires are federal, interstate instruments of commerce, and the pre-emption of this field by the Federal Government automatically eliminates city or state action. Wire tapping is dirty business. It is defensible only for national security and maybe kidnaping and then only when strictly supervised and closely controlled.

I might add that I have, previously, publicly stated that I would be content with supervision by the Attorney General of the United States, but in the light of his recent behavior, I have changed my mind. I think wire tapping would not be worth the price unless approved by an appointee of the highest court of our nation. Under such control, supervision and limited use, I would allow the taps to be introduced in evidence so that the people of our Republic and the Supreme Court's proctor could appraise this invasion of privacy in our battle for a free world.

(Applause)

Mr. Murray:

Thank you very much, Mr. Ernst. Now as our second gue-

America's Town Meeting is delighted to welcome Mr. Richardson Dilworth. Born in Philadelphia, Pennsylvania, he attended St. Mark's School and went on to Yale University in 1921. He worked a year and a half in a steel mill and in the Oklahoma oil fields and then entered Yale Law School. He was graduated in 1926, cum laude, and was an editor of the Yale Law Review.

Mr. Dilworth served a term of five years in the Marine Corps during World Wars I and II, and has been awarded the Purple Heart, the Service Star, and a Presidential Unit Citation. In 1947, he ran for Mayor of Philadelphia; again in 1949 Mr. Dilworth ran for office and was elected City Treasurer. The following year he was in the race for Governor of Pennsylvania. He was elected in 1951 to the office of District Attorney of Philadelphia, which he holds today.

Welcome to America's Town Meeting, Mr. Richardson Dilworth.

Mr. Dilworth:

Thank you. The principal objection, it seems to me, the average person has to wire tapping is that it violates the sanctity of the home, and it is essential that in a democracy the sanctity of the home be firmly preserved. However, our courts have never construed the sanctity of one's home to go so far as to prevent its invasion in any form. Search of one's home is permitted when necessary to prevent the commission of crimes or to seize persons who have been engaged in the commission of crimes.

This does not mean indiscriminate searches. A search of one's home can be made only upon obtaining an Order of Court after showing there is reasonable cause to believe the home is sheltering a person wanted for the commission

of a crime, or that the home contains the fruits or tools of a crime. Modern means of communication have made it essential that law enforcement officers have this same privilege of search with regard to telephone systems, for today organized crime makes every-day use of the telephone as one of the basic tools of its operations.

Therefore, where law enforcement officers have good reason to believe telephone wires are being used in the actual commission of crime, the police should be permitted to tap telephone wires, provided it is done under proper supervision of the courts. By that I mean that to obtain court permission to tap telephone lines, the application should be made by the district attorney or chief of police —no lesser official should have that privilege.

In addition, the law enforcement official should be required to show: first, good cause to believe that tapping will either prevent or solve a crime; second, that the matter under investigation constitutes a real and immediate threat, either to human life, the public welfare, or to our national security; and third, that there is no other feasible means of obtaining the evidence. In short, to protect the rights of the individual in wire tapping we need real statutory safeguards, a firm judiciary, and the restraining influence of an aroused public opinion. (*Applause*)

Mr. Murray: Thank you very much, Mr. Dilworth. Gentlemen, am I correct in assuming that, as far as tonight's discussion is concerned, you are in some measure of agreement, where wire tapping as a legal instrument should be employed for the security of the nation? Mr. Ernst.

Mr. Ernst: Yes, I think there is an area of agreement.

Mr. Murray: I would like to ask with respect to that, however, on a national level, through what medium would you, Mr. Ernst, and you, Mr. Dilworth, suggest that on that level the authority be issued, and what agency or agencies be entrusted with carrying out that authority?

Mr. Ernst: I would centralize it in one agency, the FBI, and only under the jurisdiction of an appointee of the highest court.

Mr. Murray: Mr. Dilworth?

Mr. Dilworth: Now I would agree entirely with that.

Mr. Murray: Then that means that you would exclude, for example, the office of the Attorney General, the various intelligence organizations of the Federal Government?

Mr. Ernst: I would certainly exclude the Pentagon, which taps in limitless numbers without supervision, and when I say the FBI, the FBI is under the Attorney General, therefore its application would flow through the Attorney General to the Supreme Court.

Mr. Murray: Do you agree with that, Mr. Dilworth?

Mr. Dilworth: Yes, that is absolutely right.

Mr. Murray: Before we leave that particular topic, gentlemen, would you advocate that these agencies which we just mentioned, if not authorized, be subject therefore to some punitive measure by virtue of this new legislation, were they to tap wires?

Mr. Ernst: Yes, I should think that it is the duty of the President of the United States today to issue a statement, as to how many taps are made at the Pentagon, and by

whom and for what duration. That would soon stop that nonsense.

Mr. Murray: Therefore, it appears that this evening the area of disagreement lies rather in the extension beyond the national security level. Mr. Dilworth, if I understand correctly, you favor the legalization of wire tapping down through the state and possibly even the municipal level, where warranted?

Mr. Dilworth: I think it's got to be extended to a municipal level. For example, I seriously don't believe that big cities could handle municipal crime if they were completely barred from wire tapping —completely and effectively barred from wire tapping.

Mr. Murray: And from your opening statement, Mr. Ernst, I gather that you oppose that extension?

Mr. Ernst: I think that the local police officials will find that their powers are limited and they will get fewer convictions. I would sacrifice that benefit to society to save the privacy of the people, and prevent the cops of the land and the prosecutors stooping to the level of the underworld by tapping wires.

Mr. Murray: Mr. Dilworth?

Mr. Dilworth: Snooping has always been necessary in law enforcement. I agree with Mr. Ernst, it should be kept to a minimum, but snooping is a necessary adjunct, unpleasant as it may be, of law enforcement, and I just don't think you can get away from it.

Mr. Ernst: I want to make one point. My main worry on the snooping level is that when you tap my wire as it has been tapped they're not only tapping me, but they're tapping hundreds of people who telephone me. This place

wire tapping on a different level from search and seizure in the home.

Mr. Murray: Well that brings up a very critical and crucial point, gentlemen. Many experts, I believe Mr. Roger Baldwin among them, have declared that once you open the door to wire tapping it is almost impossible to establish the necessary safeguards down the line. How do you feel about that?

Mr. Ernst: For national security I would take that risk, and for nothing else.

Mr. Murray: And you, Mr. Dilworth, how do you feel about the establishment of safeguards, particularly against innocent persons as Mr. Ernst described?

Mr. Dilworth: There is no doubt about it, it is difficult to establish those safeguards, and this problem is just like any of the problems of law enforcement. Fundamentally, the problem is the preservation of the dignity of the individual on one hand, which is certainly vitally important in a democracy, versus the maintenance of order in society on the other hand, which is also tremendously important in a democracy. The question is, where do you draw the line?

As a local prosecutor, I am convinced that with modern technological advances, particularly in the field of communications, that your organized criminal is so far ahead of you if you are completely barred from cutting in on his communication system, that you would be absolutely lost—if you were barred absolutely from cutting in on the telephone communications of serious crime, and particularly organized crime. Right in our own city, for example, we know that down in the lower end of our city there is a gang that

has been operating for years; it's actually controlled from south New Jersey; their business is openly conducted by telephone.

Mr. Murray: You are speaking of Philadelphia, Mr. Dilworth?

Mr. Dilworth: Yes. And here, of course, there has always been very close communication between Manhattan and Jersey City, where there has always been so much of the horse racing business. I think it would be almost impossible to effectively keep any control over organized crimes of that kind if you are completely barred from cutting in on telephone wires.

Mr. Ernst: I wouldn't tap for horse racing because I would legalize it.

Mr. Murray: How about the other areas of law enforcement to which Mr. Dilworth referred, Mr. Ernst?

Mr. Ernst: I would like to see national figures as to how many wires were tapped, city by city and state by state, in how many cases the taps were used in evidence, how many convictions were obtained and what kind of crimes. Our best lawyers used to tap for any little nonsense around town. I wouldn't have our cops corrupted by tapping to catch a two-dollar better or the man who collects his bets; I'd rather have it continue than to invade privacy.

Mr. Murray: Gentlemen, with respect to the possibilities of safeguards and structure at the state and municipal level, you haven't given us an idea of how you would set up the safeguards, and possibly the control, by law enforcement agencies at the state and municipal level. Mr. Dilworth?

Mr. Dilworth: On the municipal level, for example, I don't think any lesser official should be per-

mitted to apply for permission to tap wires. It should be at least the district attorney or the police commissioner, then they should be made to apply to a court, what lawyers call a court of record, for example, nothing more than the Supreme Court here or what we call our Common Pleas Court in Pennsylvania. He shouldn't be able to go to a magistrate or even to a County court, I don't think.

Then when you do go to them, I think you have to show the three things that I have outlined: You have to show that you have good cause to believe tapping will either solve a crime or prevent a crime. I think, second, that you have to show that the matter under investigation constitutes a real and immediate threat, either to human life, to public welfare, or to national security. And finally, that there is no other feasible means of running it down.

Mr. Ernst: May I say it's fun debating with our eminent prosecutor and a man of good will. I want to say that I am sure he agrees that the court, even under his proposal, should not allow tapping for more than, let's say, ten days without a renewal of the application. In this jurisdiction, in this city of New York, they tap for weeks, months. Secondly, Mr. Dilworth's position is clear, he would have the police officials and the prosecutors report weekly or monthly the number of taps, not the names, just the number, so that the community can find out the extent of the use of the invasion of privacy on the local level.

Mr. Dilworth: I think both of those things are very important. There should definitely be a time limit and a pretty short time. Ten days might be a little too short;

I would say we would go along with twenty days, and I think that each week a statement from the police commissioner should be required to be released both to the mayor and the district attorney. The district attorney's office should also be compelled to do the same — report the number of taps they made during that week.

Mr. Murray: Gentlemen, I think the American public is generally confused with respect to what would be done with the information secured through these wire taps. For example, on the federal and national security level, is it proposed that the information secured, let us say two years ago, could under a new law then be placed into evidence for espionage trials or other types of offenses of that nature?

Mr. Ernst: I'd be shocked if the Brownell position were made law to retroactively make use of evidence obtained from tapping years ago. I think the people of our Republic are entitled to notice of a change of the rules of the game.

Mr. Dilworth: Apparently he still wants to send Judy Coplon to jail; I don't see any other purpose in it.

Mr. Murray: You are agreed that, should it done, it would obviously have to be so construed and so drawn as to eliminate any possibility of an *ex post facto* operation.

Mr. Ernst: Yes, but then I would allow the taps to be introduced in evidence, a practice not now permitted in the federal courts, but permitted in most states.

Mr. Murray: Would you allow it to be introduced before Congressional committees, Mr. Ernst?

Mr. Ernst: I would not. I have

a lot else to say about Congressional committees too.

Mr. Murray: Mr. Dilworth, how do you feel about the area within which they could be introduced as evidence?

Mr. Dilworth: Oh, I think the taps should definitely be introduced in evidence in any case in which the court has permitted a tapping and in which the evidence would be material. It's very accurate for one thing; it's completely accurate with these modern recording systems; there's no more accurate evidence than what is taken down on your recording machine, so that there's no distortion whatsoever as to what the jury hears. And they get the actual and accurate conversations that have occurred.

Mr. Murray: Gentlemen, as you possibly know, each week, Town Meeting presents a complete up-to-date reference work, a handsome twenty-volume set of the American People's Encyclopedia to a listener who submits the most provocative and timely question pertinent to the subject under discussion. Tonight's question comes from Mr. Sherman W. Rabideau of Los Alamos, New Mexico. His question is this: "What consequences upon our methods of communication might legalized wire tapping have?" Mr. Ernst, would you care to give the first answer to that?

Mr. Ernst: I think the first answer that occurs to me is that I would be limited in whispering sweet nothings over the telephone to girls that I might know. I'd be very careful.

Mr. Murray: Mr. Dilworth?

Mr. Dilworth: Amazingly enough, I think experience has shown, even on the phones of persons who know their phones are tapped, that it has scarcely limited either the amount of their own conversations or the conversations phoned into them. I remember the District Attorney over here was courteous enough before we took office to show me through his own offices. He has a room there as I think everybody knows that is wired for sound and recording and has these two-way mirrors so that people can't see the observers but the observers can see everything that goes on. He says the average suspect brought in there knows perfectly well the room is wired for sound and knows perfectly well that these mirrors are phony, yet after they have been in there awhile they almost invariably talk freely and act freely. The average American is, thank heaven, a very uninhibited person and it is very difficult to do anything that restrains him.

Mr. Murray: Do you agree with that, Mr. Ernst?

Mr. Ernst: I agree as to the nature of our great people.

Mr. Murray: Gentlemen, we now come to the most stimulating portion of America's Town Meeting, wherein our studio audience directs questions to each of you, and we will begin with the gentleman on my left. You have a question, sir?

QUESTIONS, PLEASE!

Questioner: Mr. Ernst, is it true that Harry Dexter White was cleared because of an indirect reference to wire tap evidence that was brought out in the trial, or the hearing, regardless of the otherwise conclusive proof?

Mr. Ernst: He never was tried; no American jury ever found him guilty of anything. The Attorney General of the United States called him a spy; he didn't give us the evidence on which it was based. It is shocking to me that the highest laws of the nation should leave the impression with you that Harry Dexter White had ever faced a jury. The grand jury refused to indict him. That's all we know.

Questioner: In the Congressional hearing in court on the transfer of occupation currency plates, they published under the various exhibits some matters between Harry Dexter White and some of the Russian officials, I believe Mr. Gromyko or somebody, I am not quite sure as to who it was off hand, in which he agreed to help out some of the people in the Party cell in Washington to get the currency plates to Russia to help print our occupation currency.

Mr. Ernst: I am shocked that the American people and young ones like you should overlook our precious right of a jury trial. This is a charge made by somebody, maybe Bentley. People, in my judgment, are never guilty until found guilty by a jury. Don't listen to one charge, even in spirit, against a dead man. I don't know whether he is innocent or guilty.

Questioner: Well this is his own letter.

Mr. Murray: May I have a ques-

tion from the young lady in the center, please.

Questioner: Mr. Dilworth, since only one person has been convicted by using wire tapping evidence, is wire tapping absolutely necessary for the nation's welfare?

Mr. Dilworth: I think you are sort of confused, Madam. What Mr. Ernst said was that only one person has ever been convicted for using it or for tapping wires. In other words, despite the fact that many of the states have laws, despite the fact that there is a federal law which in theory makes it unlawful to tap wires and use the evidence obtained from tapping the wires, only one person has ever been brought to trial, or at least only one person has ever been convicted for wire tapping.

Mr. Murray: May I say that it was I who made that statement, Mr. Dilworth—not Mr. Ernst.

Mr. Ernst: May I say I agree entirely with Mr. Dilworth. This was for illegal wire tapping.

Mr. Murray: Next question, please.

Questioner: Mr. Dilworth, judging by your experience in law enforcement, do you feel that, if wire tapping was made legal, many law breakers would avoid using the telephone and thus nullify the benefits gained?

Mr. Dilworth: No. We know, for instance, during those basket ball investigations, they were sure that a lot of those men knew their wires were being tapped, yet in their desire to communicate with one another they continued to use the telephones almost as freely as before they had any notice of it. That's been true in the tapping of

wires in the so-called interstate organized criminal syndicates. It's practically a necessity in their business that they do a lot of telephoning; they just can't help telephoning one another.

It seems to be their first reaction to reach for the phone and call somebody in Las Vegas or some place like that, and the result is that I think you are always going to have a tremendous amount of use of the phones by criminals, no matter how much tapping goes on.

Questioner: Mr. Ernst, since telephones are a public facility, why are they legally connected with the privacy of homes? Their messages always leave the home, and law enforcers have no interest in irrelevant material.

Mr. Ernst: I don't quite get the question.

Questioner: Well, I am concerned about the legality of calling invasion of privacy of one's home where lines are tapped, because telephones are a public facility.

Mr. Ernst: Yes, but there is such a thing as being able to talk from your home to someone you know and like and not have a communicative climate that is full of fear as to what you are going to say. It is as real as if you are talking to someone in the room, and I would prefer living in a climate and culture where I could talk freely.

Questioner: But law enforcers have no interest in irrelevant material and all they do is enforce the law.

Mr. Ernst: But it is true, I should think, that if all the police of the nation were indiscriminately allowed to tap or individuals were, on your theory, then you would find the opening up of blackmail just beyond measure.

Questioner: Pardon me, but my theory is not indiscriminate wire tapping.

Mr. Ernst: If all the police could just tap, on your theory, we wouldn't be able to judge.

Questioner: I didn't say that. I agree completely with what both of you gentlemen have said regarding the legal restrictions. Also I do not know just how it can be enforced in view of the difficulties that were encountered in enforcing the amendment against alcohol, for instance.

Mr. Ernst: Lady, I would hate to see a society where the police could tap your phone. I am frank to say there are things that I say over my phone that I don't want anybody to hear but the person I speak to. And I prefer to live in that kind of a world. *(Applause)*

Mr. Murray: The young lady in the center aisle.

Questioner: Mr. Ernst, could the constitutionality of wire tapping be questioned without a deposition or signed affidavit by the accused?

Mr. Ernst: You mean could the information obtained by the tapping be disputed by the person who said it? Sure, and I agree with Mr. Dilworth that the taps are very good evidence because they are recorded.

Questioner: But would that make it unconstitutional?

Mr. Murray: In other words, without a deposition or an affidavit by the person accused, you are asking Mr. Ernst would it be constitutional to present under any circumstances wire tapped evidence? What I think the lady is probably driving at is if it were legalized, she wonders whether or not there would also have to be a deposition or an affidavit by the

accused that he actually did make those statements.

Mr. Ernst: The accused couldn't make the statement. It would be a confession of guilt.

Mr. Dilworth: What the lady is getting at is, if somebody confessed a murder or something over the telephone, could that be introduced in evidence since the person hadn't been warned of his rights and so forth and so on? I think there is a considerable difference of opinion on that, don't you?

Mr. Ernst: I do, but it seems to me that the crux of my question is how far down the line from national security you allow, armed and protected by the courts, wire tapping.

Mr. Murray: It would certainly be more directed to Mr. Dilworth's thesis than to yours, Mr. Ernst. May I have the next question?

Questioner: Mr. Dilworth, do you think that any spy or a hunted criminal will be stupid enough to use the phone, knowing that wire tapping is legalized? Why endanger the privacy of the entire population to get a criminal or a spy who probably will never use the phone?

Mr. Dilworth: I am afraid your premise is wrong. Experience has repeatedly shown in every big city and in every community that they use the phone repeatedly, even in cases where they know that that phone is tapped. It is amazing, but they do it, and the tapped phones are used to such an extent, particularly we have seen it in the two years we have been in office, just in crime in an old steady city like Philadelphia. It is amazing the extent to which telephones are used in the carrying out of crime and the planning of crime. It has

been perfectly amazing to me, the freedom with which people talk over the phone.

A lot of recordings that I have seen start right off by saying, "We had better be careful, we have reason to believe this phone is tapped." Well, they are careful for three or four minutes and then it begins to flow out just like water.

Mr. Ernst: I would like to confirm Mr. Dilworth's statement by saying that I think he is right, as proven at the time the Nazi wires here were tapped before the war and after.

Questioner: Who said the Nazi's were smart? If I may answer Mr. Dilworth, of course I have no evidence to contradict what he says. I have seen it in the movies; the racketeers are dumb enough to talk over the phones about their secret connivances, but I doubt very much whether a real live spy or a real criminal will use a telephone, knowing it was tapped legally or illegally.

Mr. Dilworth: Thank heavens that experience has shown that even the cleverest of spies is amazingly careless in every way, and that is the reason so many spies are repeatedly caught.

Questioner: Mr. Ernst, how conclusive do you feel evidence should be that is obtained from wire tapping?

Mr. Ernst: No more than any other testimony subject to rebuttal; it is only one part of the story in the search for truth, and I don't agree with the people who draw conclusions that White or somebody else is a spy until he has been tried, because this is just one part of the difficult search for truth.

Questioner: Mr. Ernst, also, is it

not true that wire tapping would invite blackmail by less scrupulous government agents?

Mr. Ernst: No question but this is one of the dangers if you extend it too far. There is always the threat of blackmail. You are tapping a person for some one reason; it might be a bona fide social act, and the man is making a date with his blonde, or is calling up a friend, or is bribing a buyer in a department store. And the first thing, you open the whole society to blackmail.

Mr. Murray: Mr. Dilworth, would you care to comment on that question in the light of your desire to extend the law to state and local levels?

Mr. Dilworth: Oh, I don't have any doubt that is a thing on which you have to be on constant guard to see that your law enforcement officers don't begin a nice and profitable little sideline of shake-down and graft. You have to be constantly watchful, and then I think one of the things that helps very much is if the courts will occasionally require that the taps and recordings be brought in before them to be heard by them as suggested. Also I think that something that helps the matter is the publication each week of the number of taps that have been made in any municipality. You have to be constantly vigilant to stamp out that sort of practice.

Mr. Murray: As a point of inquiry for our listeners, Mr. Dilworth, what is done customarily with wire tapped tapes after they have been discarded? Are they destroyed under the supervision of the court, for example?

Mr. Dilworth: Not as far as I know. Take in our state, theoretically there is a statute that

made wire tapping illegal, but evidence obtained from wire tapping can be offered in the courts. Wire tapping has been used indiscriminately in every big community in Pennsylvania, and it is not under any particular system. Sometimes they are preserved; sometimes they are not recorded; sometimes they have listened in on headphones. That is one great trouble at the present time; there just is no system. We have tried to put in a system in our own police department and in our district attorney's office. We record every tap that is made, and city council has recently complained that it costs too much money.

Questioner: I think this has already been answered. If there has been legal wire tapping, why hasn't it been used as evidence, Mr. Ernst?

Mr. Ernst: Federal courts have held as a matter of law, not statute, that you may not introduce wire tapped evidence in a trial. Most of the states permit its introduction.

Questioner: Mr. Ernst, if you would use wire tapping in cases indicating current present danger to the nation, where would you draw the line as to the amount of national danger a municipal case might have?

Mr. Ernst: This it seems to me we'll have to trust to some human being, and I suggest an appointee of the United States Supreme court draw the line. If men were angels there would be no need for law.

Questioner: Mr. Dilworth, it is not customary that the announcer on Town Meeting program ask a question but it seems to be pertinent. You said a little while ago that wire tap evidence is the best type of evidence for a jury. Anybody in the radio business

knows that wire tap evidence may be edited and changed, so that the message is taken out of context and something entirely different comes out. For example, I might say I did *not* beat my wife, and the editor could drop the *not* and it comes out I *did* beat my wife.

Regarding this, then, how admissible would this evidence be before a court and jury in so far as it may be edited? It may be changed entirely; it would be subject to all sorts of abuse by public officials who are not worthy of trust, who may want to frame a particular individual.

Mr. Dilworth: Before its introduction, the person to whom it was introduced would be subject to the same course of examination that police officials are subject to when they seek to introduce a confession. They have to show that it was not obtained under duress or by other fraudulent means, that it was accurately transcribed, that it was either read to or read over by the person who made the confession and so forth. I think it

would be a completely relevant cross examination to look into that entire problem before any recording of a wire tapped conversation was admitted as evidence.

Questioner: Mr. Dilworth, since wire tapped evidence could be so distorted and changed, wouldn't it be possible, then, for a public official whose motives weren't of the best to so distort it that he could obtain a conviction when he particularly was anxious to do so, even though it was not necessarily contained in that wire tap evidence originally?

Mr. Dilworth: I am ashamed to say I am not particularly familiar with technological aspects, but I have been informed by the messenger of your local outlet in Philadelphia, WFIL, that any good radio engineer by a careful examination of a recording can tell whether it has been distorted in any way.

Mr. Murray: Gentlemen, our time has run out. Thank you very much for your most interesting discussion tonight.

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FOR FURTHER STUDY OF THIS WEEK'S TOPIC

Background Questions

WIRE TAPPING—ITS HISTORY

1. An article in *The Reporter*, 12/23/52, stated that "wire tapping is now common practice in almost every troubled area of American life." Do you agree?
 - a. If so, how long has this practice been going on? Did it start with the very inception of telephonic communication?
 - b. What type of groups or people resort to wire tapping? e.g. federal, state and municipal agencies, congressional committees, political organizations, private individuals, etc.
 - c. For what purpose is wire tapping most frequently used—criminal

detection, espionage surveillance, business or political uses, private uses (e. g. blackmail, divorce, etc.)?

2. It is reported that 42 states restrict tapping in some manner; 2, Delaware and New Jersey, outlaw divulgence in court, while 7 others, including Massachusetts and N.Y., permit it by local law-enforcing officers. How did these various approaches evolve?
3. In view of the Federal Communications Act of 1934 which supposedly outlawed and provided severe penalties for wire tapping, why has only one person ever been prosecuted and convicted for this offense?
 - a. Is or isn't wire tapping per se a federal crime?
4. Does wire tapping provide leads to other sources of evidence? If so, is use of such evidence legal?
5. Do state laws authorizing wire tapping as a crime deterrent supersede the Federal Communications Act?

WIRE TAPPING—A CONSTITUTIONAL QUESTION?

1. Is the right of privacy guaranteed by the Constitution?
2. A recent editorial in the *Wall Street Journal*, 11/19/53, stated, "A law making wire tap evidence acceptable in Federal courts might not literally violate the First Amendment's prohibition against laws of Congress abridging freedom of speech, but it seems to us such a law could easily violate the First Amendment's spirit. It could create an atmosphere in which people would be afraid to talk on the telephone about anything." Do you agree?
3. The late Justice Brandeis, in a minority opinion, joined by the late Justice Holmes, held that "every unjustifiable intrusion by government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." Do you agree?
 - a. Does wire tapping constitute such an unjustifiable intrusion?
 - b. Does wire tapping violate the constitutional rights under the Fourth Amendment of innocent parties to telephone conversations?
4. Could use of wire tap evidence ever violate rights under the Fifth Amendment?
 - a. During the testimony of D. A. Miles McDonald of Kings County, N.Y. on the bill proposed by Attorney General Brownell, Congressman Keating and Willis expressed doubts as to the constitutionality of the proposed statute if the wire tap evidence might include the confession of a crime. Do you agree?
 - b. Mr. McDonald held, however, that such a confession if freely and voluntarily made in a telephone conversation would be no less free and voluntary because a third party overheard it on a wire tap. Do you agree?

JAMES F. MURRAY, JR.

Moderator of

"America's Town Meeting"

James F. Murray, Jr., New York City Attorney, specializing in International Law, Foreign Affairs Consultant, Author and Lecturer, was born in Jersey City, New Jersey, in 1919.

He received his education at St. Peter's College (A.B.), Fordham University School of Law (LL.B.) and Fordham University's Graduate School (M. A. in Modern European History). He is presently a candidate for his Ph.D. in the same field.

During World War II James Murray was a Lieutenant Commander in the U.S.N.R. and saw 53 months of active duty. In the early phases of the war he was among the first four officers chosen to participate in special combat intelligence landing teams. In this capacity he took part in the invasion campaigns of Africa, Sicily, Anzio and Salerno. He was later appointed to the Staff of the Naval Commander of the U. S. 8th Fleet in the Mediterranean and subsequently became special advisor to the Commander of the 18th Fleet at London.

In addition to four battle stars he was awarded the Legion of Merit with Combat cluster for "extreme bravery" and "exceptionally meritorious service"; received three U. S. and one British citation; was decorated with the Bronze Medal of Valor of the Italian Republic and the Order of the Crown of Italy.

In early 1946 Mr. Murray was appointed as assistant Naval Advisor to the United States Deputy, James Dunn, at the London Deputy Foreign Ministers Council. Following this he was named Assistant Naval Advisor to Secretary of State, James F. Byrnes, at the Council of Foreign Ministers Conference in Paris, preparing the Treaties of Peace with Italy, Hungary, Bulgaria and Rumania. During this period he engaged in several special missions to Greece, Sweden, the Netherlands and the Nuremberg Trials.

Since the end of the war he has made numerous visits to Europe and elsewhere in his professional capacity. He has been in frequent contact with political, diplomatic and military leaders of western nations. On one trip in 1948 he was seized and held as a "spy" by the Soviets in the Russian zone of Vienna.

Mr. Murray is a member of the faculty of St. Peter's College where he has conducted courses on "The United States in the Present World Crisis." He is active in civic and cultural affairs, being founder of the Jersey City Fine Arts Foundation, Past President of the Jersey City Community Concert Association and engages in lecture tours and other public appearances in Eastern Universities and Civic Centers.

In May, June and July of 1952 he visited France, Italy, Yugoslavia, Greece, Turkey, Belgium and Luxembourg. During his stay in Yugoslavia, he was accorded a two hour audience with Archbishop Alois Stepinac in his place of confinement at Krasic in the mountains of Croatia. At Rome he was received in a private audience by Pope Pius XIII.

His most recent trip abroad was in this past July to Holland, France, Italy and England. In London he was moderator of a trans-Atlantic debate on "Town Meeting of the Air" between Senator Flanders of the United States and a British Member of Parliament.

Mr. Murray is married and the father of four children.

